

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
September 7, 2010

In the Matter of B. KIBLER, Minor.

No. 296913  
Berrien Circuit Court  
Family Division  
LC No. 2007-000146-NA

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Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

PER CURIAM.

Respondent, the mother of the involved minor child, appeals as of right an order terminating her parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).<sup>1</sup> We affirm.

BK, the minor involved in this case, who is a low functioning autistic child, has two elder siblings. Respondent and her husband had an extensive history with Children's Protective Services (CPS) dating back to 2002 for issues that included repeatedly deplorable living conditions and failing to properly supervise the children. In June 2007, concerns surfaced about the father's alleged sexual abuse of BK's older sister, and in August 2007 CPS substantiated a referral that the children's home again was in "horrible" condition. The children's father spent long periods working away from home as a truck driver, leaving respondent to care for the children alone. In 2007, BK's two older siblings entered a guardianship with their paternal aunt, but the aunt did not feel that she could attend to BK's special needs, which demanded 24-hour attention. BK thus remained in his parents' care while the Department of Human Services (DHS) again offered assistance. However, in November 2007, the DHS petitioned for BK's removal from his parents' custody after they moved in with respondent's parents; respondent's father had a 1982 fourth-degree criminal sexual conduct conviction. The circuit court exercised jurisdiction over BK on the basis of the parents' January 2008 no contest pleas to the many petition allegations. The circuit court ordered the father to undergo a psychological evaluation, and both parents to clean and perform the necessary repairs on their condemned home, complete parenting classes, educate themselves on the topic of caring for an autistic child, engage in family and individual therapy, submit random drug screens, attend parenting times, and maintain regular contact with their case worker.

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<sup>1</sup> The child's father, who voluntarily relinquished his parental rights, is not party to this appeal.

The parents made substantial progress toward all of their treatment plan components. The father, who no longer worked as a truck driver, had become more available, and his presence supplied much in the way of stability. The family home had running water and was cleaned, and the parents began to enjoy overnight visits with BK. By September 2008, the parents had made such progress that the case worker anticipated BK's imminent return. However, it soon came to light that BK's sister, who had resided out of her parents' care for a year, had made more specific allegations of past sexual abuse against her father. Authorities brought criminal charges against the father. He pleaded to a charge of first-degree criminal sexual conduct and was sent to prison. In early 2009, the father voluntarily relinquished his parental rights to all three of his children.

The new case worker filed a supplemental petition seeking termination of respondent's parental rights to all three children, primarily premised on a failure to protect theory. A termination hearing occurred over the course of three days in June 2009 and July 2009. The circuit court declined to exercise jurisdiction over BK's two elder siblings, and in September 2009, the court entered an opinion and order finding none of the asserted grounds for terminating respondent's parental rights to BK proven by clear and convincing evidence. The court noted that in light of respondent's significant progress to this point in the child protective proceeding and the clear bond that BK and respondent shared, respondent deserved a further fair opportunity to demonstrate her ability to care for BK in the father's absence. The court emphasized that respondent had to promptly comply with the following specific tasks, lest the DHS refile the permanent custody petition:

*Continued educational services/one-on-one parenting skills training to develop her understanding of autism and how to deal with [BK's] disability;*

*Ongoing frequent visitation with [BK] to learn his needs and how to meet them and provide him appropriate direction, discipline, stability and safety;*

*Counseling for mom to address the emotional issues which this case raises ([BK's] disability, her husband's incarceration, her victimization through domestic violence, her advocacy relative to her son and her daughter's sexual abuse, etc.);*

*Maintaining stable, safe & suitable (clean & clutter-free) housing without other inappropriate persons residing there;*

*Filing for divorce from [the father] so as to secure the family home for herself and [BK] and demonstrate her commitment to [BK] over his father;*

*Maintaining adequate income to support herself and [BK] and*

*Appropriate supportive services to provide respite for the mother.*  
[Emphasis in original.]

Respondent did not satisfy any of her court-ordered obligations, other than filing for divorce from the father. Respondent attended no counseling between August 2009 and January 2010.<sup>2</sup> Although respondent resumed counseling four weeks before the February 2010 termination hearing, her therapist characterized respondent as dishonest in discussions of issues concerning her emotional stability. Additionally, respondent effectively abandoned BK. Respondent knew of BK's special needs for structure and routine and that he shared a strong bond to her, yet she last attended a parenting time about six weeks before the termination hearing. Respondent claimed that she regularly left town for work, but she ignored repeated DHS requests for documentation of income or financial security. In light of the current caseworker's multiple unsuccessful efforts to locate respondent in the months before the termination hearing, the worker viewed respondent as essentially homeless; respondent rarely lived at the former marital home, instead residing with either a male friend or her parents. Respondent tested positive for marijuana in December 2009, and she did not complete any offered drug screens.

Respondent on appeal contends that the record did not sufficiently establish any statutory grounds warranting the termination of her parental rights to BK. A circuit court may terminate a respondent's parental rights if clear and convincing evidence supports one or more of the statutory grounds listed in MCL 712A.19b(3). "We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest" under MCL 712A.19b(5). *In re Trejo*, 462 Mich 341, 356-367; 612 NW2d 407 (1999); see also MCR 3.977(K). "A finding is 'clearly erroneous' if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989) (internal quotation omitted).

The evidence clearly and convincingly substantiated that the conditions leading to BK's adjudication continued to exist, and that no reasonable likelihood existed that respondent could properly care for BK within a reasonable time. MCL 712A.19b(3)(c)(i). The evidence also clearly and convincingly established that while respondent may have genuinely cared for BK, she simply could not provide for his daily needs, especially given her apparent recent struggle to care for her own needs. And the evaporation of respondent's prior progress when the circuit court afforded her additional time in which to exhibit her capacity to give BK a safe and stable home environment underscores the unlikelihood that she might have the ability to care for BK in the foreseeable future. MCL 712A.19b(3)(g). Furthermore, in light of the clear and convincing evidence of respondent's inability to care for BK by herself and BK's high level of special needs

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<sup>2</sup> The record belies respondent's suggestion on appeal that she received inadequate education and referrals concerning BK's autistic condition. To the extent that respondent criticizes the DHS for failing to provide her specific services geared toward addressing domestic violence, she does not substantiate that she ever brought up domestic violence issues in the course of her individual therapy, which she abandoned, or that she ever mentioned a need for domestic violence assistance to her caseworkers. Consequently, we reject respondent's suggestion that the DHS should have afforded her additional services when she did not avail herself of the services already in place.

requiring constant supervision to ensure his safety, the evidence also clearly and convincingly proved that BK remained at risk of harm if returned to respondent's care. MCL 712A.19b(3)(j).

When a petitioner has proven a statutory ground for termination by clear and convincing evidence, the circuit court must consider whether "termination of parental rights is in the child's best interests . . . ." MCL 712A.19b(5). We detect no clear error in the circuit court's finding that termination of respondent's parental rights served BK's best interests. The evidence agreed that BK felt bonded to respondent and enjoyed their visits, and that respondent interacted appropriately with BK. However, the evidence also agreed that BK had very special needs that demanded high levels of routine and stability. For example, respondent's neglect to visit BK during the last six weeks of the child protective proceeding coincided with a deterioration in BK's behaviors. BK had grown substantially over the course of the proceeding, to the point where his first foster care placement reported that BK was no longer safe in their home. The DHS had arranged for BK's placement in a facility that gives specialized care for autistic children, the type of care that respondent remained unable to provide even after two years of proffered services. The circuit court correctly found that BK was entitled to permanence and stability.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly